

REMARKS

Claims 9-17 and 19-27 are pending in the application. Claims 9-17 and 19-27 are subject to a restriction requirement by the Examiner.

Reply to the Restriction of Claims 9-17 and 19- under 35 U.S.C. § 121

The Examiner states that the present application contains claims directed various species. Specifically, the Examiner states –

This application contains claims directed to the following patentably distinct species of the claimed invention: Each species listed in claims 16 or 26 and 17 or 27.

The Examiner considers claims 9 and 19 to be generic.

Applicants elect without traverse the 'food products' listed in claims 16 and 26. All claims 9-17 and 19-27 are readable thereon.

The Examiner further requires that Applicants elect a species from claims 17 or 27. All 'species' listed in claims 17 and 27 are food products. In order for a species restriction to be proper, each species must be "PATENTABLE (novel and unobvious) OVER EACH OTHER" (MPEP §§ 802.01 and 806.04(b)). Applicants fail to see how a 'pudding' food product composition that includes water and sago starch having a WF of from about 40 to about 80 would be patentably distinct over, e.g., a similar 'custard' food composition or 'flan' food composition. Accordingly, Applicants submit that each particular food product of claims 17 and 27 are not patentably distinct and independent of each other, and therefore the Examiner's species restriction with respect to claims 17 and 27 is improper.

In the event that the Examiner maintains his species election requirement with respect to claims 17 and 27, Applicants elect with traverse the species 'yogurt'.

Dated: 4 June 2004

NATIONAL STARCH AND CHEMICAL  
COMPANY

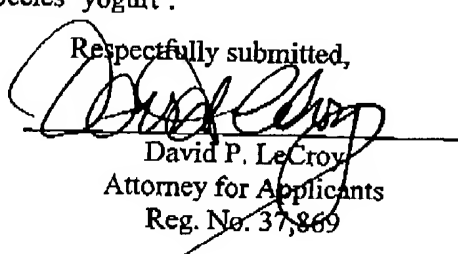
Post Office Box 6500

Bridgewater, New Jersey 08807-0500

Phone 908.683.5433

Fax 908.707.3706

Respectfully submitted,

  
David P. LeCroy  
Attorney for Applicants  
Reg. No. 37,869